cannot, against the consent of parties sui juris, seised of a vested estate, authorize the sale of their real estate. See Gilpin and Wife *v.* Williams et al., 25 Ohio St. 283.

Upon the whole case, we are of opinion that, if the statute is to be construed as conferring a right upon the life tenant by curtesy, or in dower, to demand and require a sale of the real estate in which he or she is interested where all the parties are sui juris and the estate is vested, then the statute is unconstitutional as an unwarrantable interference with rights of property and as denying the equal protection of the laws; that, if the statute is to be regarded as merely conferring the power upon the courts to order a sale where the facts set forth "would justify the sale of real estate," to follow the language of the statute, then the bill before us, in our judgment, makes no such case, and sets forth no facts which would justify the court in ordering the sale; and therefore, in either aspect, the judgment of the circuit court sustaining the demurrer to the bill was right, and should be affirmed.

Affirmed.

Note.

The unconstitutionality of § 2436a of Pollard's Code is commented on editorially in the May issue of the REGISTER.

SECURITY LIFE INS. CO. OF AMERICA *v.* DILLARD.

March 11, 1915.

[84 S. E. 656.]

1. **Insurance (§ 445*)—Life Insurance—Suicide of Insured—Effect.**—Suicide of insured while sane defeats a recovery on the policy by the beneficiary, his wife, whether the suicide was or was not in contemplation of, or in any way dealt with by, the parties as a risk covered by the policy.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1152-1158; Dec. Dig. § 445.* 14 Va.-W. Va. Enc. Dig. 657; 14 Va.-W. Va. Enc. Dig. 149.]

2. **Insurance (§ 445*)—Life Insurance—Suicide as a Defense—Pleading.**—The defense of suicide of insured while sane is based on public policy, and cannot be waived intentionally or unintentionally by stipulations or defects in pleadings.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1152-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

1158; Dec. Dig. § 445.* 14 Va.-W. Va. Enc. Dig. 657; 14 Va.-W. Va. Enc. Dig. 149.]

3. Insurance (§ 446*)—Life Insurance—Suicide as a Defense—Evidence.—Where insurer, when sued on a life policy, proved the suicide of insured while sane, the beneficiary could prove that insured was insane when committing suicide, and thereby defeat the defense of suicide.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1159-1161; Dec. Dig. § 446.* 14 Va.-W. Va. Enc. Dig. 657; 14 Va.-W. Va. Enc. Dig. 149.]

Error to Circuit Court of City of Lynchburg.

Action by Mrs. Gertrude Dillard against the Security Life Insurance Company of America. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

Coleman, Easley & Coleman and *Caskie & Caskie*, all of Lynchburg, and *F. W. Bull*, of Chicago, Ill., for plaintiff in error.

B. H. Custer, of Danville, and *Geo T. Rison*, of Chatham, for defendant in error.

KELLY, J. Mrs. Gertrude Dillard brought suit against the Security Life Insurance Company of America in the circuit court of the city of Lynchburg, upon an insurance policy issued on the life of her husband, and recovered a judgment which is now before us for review.

The proceeding was by motion, and the only pleading on the part of the defendant was a statement of its grounds of defense, which will be hereinafter briefly noticed.

[1] A number of questions are presented by the record, all of which were argued orally and in the briefs, but in our view of the case the controlling question arises out of the fact that the insured committed suicide.

It seems to be conceded, and from the record it is clear, that the insured while sane took his own life on the night of the very last day on which, without a further payment of premium, his policy could, in the most liberal interpretation of its terms, have been considered in force.

At the conclusion of the evidence the defendant requested a number of instructions, including the following:

"The court further instructs the jury that even if the policy on which this action is founded had not lapsed at the time of the death of the insured, but was then in force, nevertheless, if

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the jury believe from the evidence that the death of the insured was the result of suicide or self-destruction, they must find for the defendant."

The trial court refused to give this instruction, and its refusal is the basis of one of the defendant's exceptions.

We are aware that the question thus arising is one upon which the authorities are not in unison, but we are of opinion that upon the soundest considerations of public policy there ought not to be, and under the principles and authorities already adopted and indorsed by this court there cannot be, any recovery upon the case as made out in the record before us.

In Plunkett *v.* Supreme Conclave, 105 Va. 648, 55 S. E. 11, the president of the court, delivering the opinion, said:

"The case presented to us upon the pleadings is that of a sane man who takes his own life. In other words, as was said in Burt *v.* Union Cent. L. Ins. Co., 187 U. S. 362, 23 Sup. Ct. 139, 47 L. Ed. 216: Do insurance policies insure against crime? Is that a risk which enters into and becomes a part of the contract?

"In Amicable Soc. *v.* Bolland, 4 Bligh N. R. 194, decided by the House of Lords, the Lord Chancellor said:

" 'It appears to me that this resolves itself into a very plain and simple consideration. Suppose that in the policy itself this risk had been insured against; that is, that the party insuring had agreed to pay a sum of money year by year upon condition that in the event of his committing a capita felony, and being tried, convicted, and executed for that felony, his assignees shall receive a certain sum of money—is it possible that such a contract could be sustained? Is it not void upon the plainest principle of public policy?

" 'Would not such a contract (if available) take away one of those restraints operating on the minds of men against the commission of crimes, namely, the interest we have in the welfare and prosperity of our connections? Now, if a policy of that description, with such a form of condition inserted in it in express terms, cannot, on grounds of public policy, be sustained, how is it to be contended that in a policy expressed in such terms as the present, and after the events which have happened, we can sustain such a claim?'

"In Burt *v.* Union Cent. L. Ins. Co., supra, it is held, upon grounds of public policy, that a policy of life insurance does not insure against the legal execution of the insured for crime, even though he may in fact have been innocent, and therefore unjustly convicted and executed.

"And in Ritter *v.* Mutual L. Ins. Co., 169 U. S. 139, 18 Sup. Ct. 300, 42 L. Ed. 693, Mr. Justice Harlan, delivering the opinion, said: 'There is another consideration supporting the conten-

tion that death intentionally caused by the act of the assured when in sound mind—the policy being silent as to suicide—is not to be deemed to have been within the contemplation of the parties; that is, that a different view would attribute to them a purpose to make a contract that could not be enforced without injury to the public. A contract, the tendency of which is to endanger the public interests, or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice, or be made the foundation of a court of justice, or be made the foundation of its judgment. If, therefore, a policy—taken out by the person whose life is insured, and in which the sum named is made payable to himself, his executors, administrators, or assigns—expressly provided for the payment of the sum stipulated when or if the assured, in sound mind, took his own life, the contract, even if not prohibited by statute, would be held to be against public policy in that it tempted or encouraged the assured to commit suicide in order to make provision for those dependent upon him, or to whom he was indebted. Is the case any different in principle if such policy is silent as to suicide, and the event insured against—the death of the assured—is brought about by his willful, deliberate act when in sound mind?' "

The view approved by the opinion just referred to in the Plunkett Case, and in the authorities cited therein, has been reiterated and emphasized by the Supreme Court of the United States in the comparatively recent case of Northwestern Life Ins. Co. *v.* McCue, 223 U. S. 246, 32 Sup. Ct. 221, 56 L. Ed. 419, 38 L. R. A. (N. S.) 57. In that case Mr. Justice McKenna, delivering the unanimous opinion of the court, after reviewing with approval the case of Burt *v.* Union Cent. L. Ins. Co., supra, and Ritter *v.* Mutual L. Ins. Co., supra, says:

"These cases must be accepted as expressing the views of this court as to the public policy which must determine the validity of insurance policies, and which they cannot transcend, even by express declaration, much less be held to transcend by omission or implication"—and further, on page 249 of 223 U. S., on page 223 of 32 Sup. Ct. (56 L. Ed. 419, 38 L. R. A. [N. S.] 57):

"The question before us, and the only question, is: What rights did McCue's estate and children get by his policy? And we are brought back to the simple dispute as to whether the policy covers death by the hand of the law. This court has pronounced on that dispute, and its ruling must prevail in the federal courts of Virginia, in which state the contract was made, and it is consonant with the ruling in the state courts."

The opinion then proceeds to cite the case of Plunkett *v.* Supreme Conclave, as showing that the Supreme Court of Appeals of Virginia had expressly approved the considerations of public

policy expressed in the Burt Case and the Ritter case, and other cases of that character.

There are authorities holding that when the policy is payable, not to the estate of the insured, but to his wife or other expressly designated beneficiary, the rule announced in the Ritter Case and others of like kind does not apply; but the principle of this distinction is rejected, and we think properly so, in the McCue Case in the following language:

"One other contention of respondents remains to be noticed. It is contended that if the McCue estate cannot recover, the innocent parties, his children, will be admitted as claimants. To this contention we repeat what we have said above: The policy is the measure of the rights of everybody under it; and, as it does not cover death by the law, there cannot be recovery either by McCue's estate or by his children."

It is contended by the defendant that the original policy, properly construed, as well as the terms of a certain application for reinstatement, made less than a year before the death of the insured, contained stipulations against self-destruction which defeat the recovery. The plaintiff, on the other hand, denies that she was bound by the application for reinstatement, and contends that the original policy, though containing a provision against self-destruction, limited that provision to one year from the issuance of the policy, and claims therefore that the provision against self-destruction had no other effect than to show that suicide was one of the risks contemplated by the parties at the time the policy was issued.

We have not deemed it necessary or pertinent to go into a discussion of these contentions, for the patent reason that under the authorities which we have already cited the result must be the same, whether suicide was or was not in contemplation of, or in any manner dealt with, by the parties as a risk covered by the policy.

Counsel for plaintiff rely upon the case of Knights of Pythias *v.* Weller, 93 Va. 605, 25 S. E. 891, as supporting their contention that suicide, when shown to have been in contemplation as a risk, cannot be availed of as a defense. In that case the judgment was reversed and the cause remanded for a new trial upon a specific ground, namely, that the trial court erred in refusing to sustain the defendant's motion to strike out the plaintiff's evidence because there was a variance between the allegations and the proof, and it is manifest from the opinion that the question of public policy was not considered by the court.

[2] In the brief of counsel for the plaintiff it is said that:

"In the grounds of defense filed by the defendant in the court below the question of public policy involved in the defense of suicide was not raised, but as there stated this defense was rested

upon the alleged agreement of the insured that self-destruction was not a risk assumed, made in the original application."

This is true, but the fact of suicide was proved and the question of public policy was necessarily raised by the instruction hereinbefore set out, as well as by the motion to set aside the verdict. Our decision of this case rests entirely upon the considerations of public policy above adverted to and fully discussed in the foregoing authorities. These considerations have to do, not with the interests of the parties litigant, but with the public weal, and they overreach, in a case shown by the record to call for their exercise, all mere formal rules of procedure. They can no more be waived, either intentionally or unintentionally, by stipulations or defects in the pleadings than by provisions or omissions in the contract in litigation. As was said by Mr. Justice Field, in Oscanyan *v.* W. R. Arms Co., 103 U. S. 261, 26 L. Ed. 539, referring to a case in which a recovery was forbidden by morality and public policy:

"The objection to a recovery could not be obviated or waived by any system of pleading, or even by the express stipulation of the parties. It was one which the court itself was bound to raise in the interest of the due administration of justice."

[3] If it should be suggested (as, however, it has not been) that the plaintiff relied on the grounds of defense, and, feeling confident that the construction of the policy contended for by defendant could not be upheld, introduced no proof in rebuttal of the evidence of suicide, the answer to any such suggestion is: First, that the proof of suicide in the record, which was not objected to, seems absolutely conclusive; and, second, that this cause will be, as it must be under our practice, remanded for a new trial. At such new trial, if the plaintiff shall be advised to avail herself of one, she will have the opportunity of combatting the claim, so well established by the evidence in the present record, that the insured while sane took his own life.

The policy in this case was issued in 1905. There are indications in the record that for some time the insured had been having difficulty in meeting the premiums. The last premium falling due before his death was unpaid, but the evidence shows that he felt assured that he was entitled to a certain number of days of grace. It was on the night of the last day of grace, as he construed is policy, that he ended his life. We do not overlook the pathetic and appealing aspect which the case assumes if we indulge the natural presumption that he finally committed the act of self-destruction in order to secure a provision for his family. But the very fact that he probably took this false view of the trusteeship which he held in his own life, and of his duty to his family and to the public, illustrates the importance of establishing a known and settled public policy which will discour-

age this course of conduct on the part of others who might be similarly disposed.

It follows from what has been said that the circuit court erred in refusing the instruction above set out, and in declining to set aside the verdict of the jury. The judgment complained of will therefore be reversed, the verdict of the jury set aside, and the cause remanded for a new trial to be had not in conflict with the views expressed in this opinion.

Reversed

Note.

It is axiomatic in the law of insurance that the contract shall be liberally construed in favor of the insured and strictly construed against the insurer, and where two interpretations, equally reasonable, are possible, that construction should be adopted which will enable the beneficiary to recover. Globe Accident Ins. Co. *v.* Gerishch, 163 Ill. 625, 45 N. E. 563; Mutual Bene. Life Ins. Co. *v.* First Nat. Bank, 24 Ky. Law Rep. 580, 69 S. W. 1. Though a construction more favorable to the insurer seems the rule in Virginia. Merchants' Ins. Co. *v.* Edmund, etc., Co., 58 Va. (17 Gratt.) 138; Universal Life Ins. Co. *v.* Devore, 88 Va. 778, 14 S. E. 532.

The court in the principle case in applying the doctrine of stare decisis to the case of Plunkett *v.* Supreme Conclave, 105 Va. 643, 55 S. E. 9, has failed to make a distinction so often done by the courts in the United States, between the cases in which the beneficiary has a vested right in the policy, and those in which it is made payable to the personal representatives or the estate of the deceased. Many courts hold that in the case of an ordinary insurance policy payable to a designated beneficiary and conferring upon him a vested right in the policy, the right of recovery can not be affected by the acts of the insured's suicide while sane, unless the policy so provides. Morris *v.* State Mut. Life Assur. Co., 183 Pa. 563, 39 Atl. 52; Fitch *v.* American Popular Life Ins. Co., 59 N. Y. 557; Patterson *v.* Natural Premium Mut. Life Ins. Co., 100 Wis. 118, 75 N. W. 980; Parker *v.* Des Moines Life Ass'n, 108 Iowa 117, 78 N. W. 826.

On the other hand when the beneficiary has no vested interest, as is the case under a mutual benefit certificate, the courts are divided, though the majority permit a recovery even in this instance. Grand Legion *v.* Beaty, 224 Ill. 346, 79 N. E. 565; Kerr *v.* Minnesota Mut. Bene. Ass'n, 39 Minn. 174, 39 N. W. 312; Campbell *v.* Supreme Conclave, 66 N. J. L. 274, 49 Atl. 550; Supreme Conclave *v.* Miles, 92 Md. 613, 48 Atl. 845. Contra, Ritter *v.* Mutual Life Ins. Co., 169 U. S. 139, 42 L. Ed. 693, 18 S. Ct. 300; Marcus *v.* Heralds, 241 Pa. 429, 88 Atl. 678.

When the insurance is procured in contemplation of suicide the courts with apparent unanimity hold that suicide while sane is a defense regardless of a provision in the policy applicable thereto on the ground that in such a case the suicide is a fraud and to permit a recovery would be against public policy. On this ground a recovery was denied in Ritter *v.* Mutual Life Ins. Co., 169 U. S. 139, 42 L. Ed. 693, 18 S. Ct. 300; Smith *v.* Nation Bene. Soc. 123 N. Y. 85, 25 N. E. 197.

In allowing the suicide of the insured while sane to defeat a recovery under the policy, various reasons have been assigned by the

courts attempting to justify their holdings. Chief among them the following: First, that though not expressed it is an implied condition of the policy that the insured will not take his life. It would seem that a reasonable construction of insurance policies in general would create an indication of a contrary effect. Contracts of life insurance generally specify the acts of defaults on the part of the insured or the member which shall work a forfeiture of the contract. If the right to recover on the certificate is to be defeated by the act of the insured in purposely taking his own life while sane, the contract should so specify. The mere absence of such a provision in the contract leads such an applicant to conclude that the contract is not defeasible by intentional self-destruction on the part of the insured. Grand Legion *v.* Beaty, 224 Ill. 346, 79 N. E. 565, 567.

The argument that the insurance is taken out and the amount of premiums fixed upon the assumption that the insured will live out his natural life, has been well answered in Campbell *v.* Supreme Conclave, 66 N. J. L. 274, 49 Atl. 550, and Lange *v.* Royal Highlanders, 75 Neb. 188, 106 N. W. 224, 110 N. W. 1110, by the fact that the premiums are based on the expectancy of life, and, in determining this, death by suicide has been taken into consideration as well as other causes.

Second, recovery has been denied on the ground that to permit a recovery would furnish an inducement to commit suicide and such would be against public policy. Ritter *v.* Mutual Life Ins. Co., 169 U. S. 139, 42 L. Ed. 693, 18 S. Ct. 300. And upon this ground the court rests its decision in the principle case.

But it is difficult to say how the public good is more concerned to prolong a life that may be worthless to the public, than to secure to creditors their just demand or to afford a maintenance to the wife and children of the deceased. Insurers may guard their interest in their contract and having omitted to specify a forfeiture upon the suicide of the insured while sane there seems no sound reason for denying a recovery. No public policy can be more useful than that which holds contractors to the strict performance of their agreements. If public policy demands that contracts be interfered with in order to discourage suicide, then the contract of creditors insuring the life of his debtor or a wife insuring the life of her husband should likewise be denied recovery by the suicide of the insured, for the same motive of self-destruction for the benefit of the assured will be impelling in such cases as in the case where the contract is directly with the insured, yet it seems never to have been even suggested that one having an insurable interest in another's life may not at his own cost, himself contract insurance on that life without the risk of forfeiture by the suicide of the insured. Again to deny recovery on the ground that suicide is a crime and to allow a recovery in such an instance would be encouraging the perpetration of crime seems to have been a factor in determining the decision of the principal case by the forced analogy to the case of Northwestern Life Ins. Co. *v.* McCue, 223 U. S. 234, 32 S. Ct. 220, 56 L. Ed. 419. But even considering suicide to be a crime in this state, there can from the very nature of the case be no punishment and punishment is of the essence of crime. The majority of the courts—distinctly hold that suicide is not such a crime as will avoid a policy of life insurance upon the ground that such a death is

within the "violation-of-law" exception. Darrow *v.* Family Fund Soc., 116 N. Y. 537, 22 N. E. 1093; Royal Circle *v.* Achterrath, 204 Ill. 549, 68 N. E. 492.

And thirdly, the courts refuse to permit to permit a recovery on the ground that the estate of the insured should not be permitted to derive a benefit from his own wrong. In sustaining such a holding the analogous case of self-destruction of one's property under a fire insurance policy is often cited. But it seems that the two cases are entirely different, for in one the insured himself will profit from maxim ex turpi causa oritur non actio has been generally repudiated as to its effect upon the heirs of a deceased wrongdoer. Wall *v.* Pfanschmidt, 265 Ill. 180, 106 N. E. 785. It is hardly more than a modern repudiation of the ancient doctrine of the corruption of blood

The court in the principal case in saying that the result of their decision must be the same "whether suicide was or was not in contemplation of, or in any manner dealt with, by the parties as a risk covered by the policy," seems certainly to have gone further than any other reported case upon the point, the courts holding with practical unanimity that, under a policy containing the "sane or insane" clause, recovery must be denied when the insured commits suicide while sane, Dickerson *v.* Northwestern Mut. Life Ins. Co., 200 Ill. 270, 65 N. E. 694; but even in such a case permitting recovery if the suicide is a result of insanity. Fraternal Relief Ass'n *v.* Edwards, 9 Ga. App. 43, 70 S. E. 265; Cady *v.* Fidelity, etc., Co., 134 Wis. 322, 113 S. W. 325. And now under the usual incontestable clause of the modern insurance policy recovery is always allowed even in the case of a suicide while sane. Patterson *v.* Natural Premium Life Ins. Co., 100 Wis. 118, 75 N. W. 980; Goodwin *v.* Provident Sav. Life Assur. Ass'n, 97 Iowa 226, 66 N. W. 157